



U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [REDACTED]
EAC 99 257 52509

Office: Vermont Service Center

Date: AUG 21 2001

IN RE: Petitioner:
Beneficiary:

[REDACTED]

APPLICATION: Petition for Special Immigrant Battered Child Pursuant to Section 204(a)(1)(A)(iv) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iv)

IN BEHALF OF PETITIONER:

[REDACTED]

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Turkmenistan who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iv) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iv), as the battered child of a citizen of the United States.

The director determined that the petitioner failed to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident parent while residing with that parent. The director, therefore, denied the petition.

On appeal, counsel asserts that the excessive and unpredictable sexual promiscuity of the spouse of the petitioner's mother has caused the mother/battered spouse to fear that this young child (the petitioner) may be sexually molested if left alone with the batterer. Counsel submits evidence previously furnished and contained in the record of proceeding.

8 C.F.R. 204.2(e)(1) states, in pertinent part, that:

(i) A child may file a self-petition under section 204(a)(1)(A)(iv) or 204(a)(1)(B)(iii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the child of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident parent;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident parent while residing with that parent;

(F) Is a person of good moral character; and

(G) Is a person whose deportation (removal) would result in extreme hardship to himself or herself.

The record reflects that the petitioner's mother married her United States citizen spouse on [REDACTED]. On June 9, 1999, the petitioner entered the United States as a CR-2 conditional resident. On August 26, 1999, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen parent while residing with that parent.

8 C.F.R. 204.2(e)(1)(i)(E) requires the petitioner to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen parent while residing with that parent.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. 204.2(e)(1)(vi) provides:

[T]he phrase, "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident parent, must have been perpetrated against the self-petitioner, and must have taken place while the self-petitioner was residing with the abuser.

8 C.F.R. 204.2(e)(2) provides, in part:

(i) Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

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(iv) Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit

copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other types of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

Because the petitioner furnished insufficient evidence to establish that she has met this requirement, she was requested on February 20, 1998, to submit additional evidence.

The director reviewed all the evidence furnished by the petitioner, including evidence furnished in response to the director's request for additional evidence. He noted that the record contains evidence to indicate that the petitioner's mother was the subject of extreme cruelty perpetrated by Mr. [REDACTED] (her mother's spouse). He further noted that the events of extreme cruelty seemed to have take place before the petitioner entered the United States on June 9, 1999 and after Mr. [REDACTED] moved out from the family residence on July 4, 1999. Therefore, in a notice of intent to deny dated March 29, 2000, the petitioner was requested to submit evidence to show that she has been battered by, or has been the subject of extreme cruelty perpetrated by Mr. [REDACTED] while residing with him from June 9, 1999 to July 4, 1999. Because no additional evidence was furnished, the director denied the petition on August 14, 2000.

On appeal, counsel submits copies of evidence previously furnished and contained in the record of proceeding. This evidence was reviewed by the director and found that while the record contains evidence to indicate that the petitioner's mother was the subject of extreme cruelty, no evidence was furnished to establish that the petitioner was the subject of extreme cruelty perpetrated by Mr. [REDACTED] from the date she entered the United States on June 9, 1999 until July 4, 1999, when Mr. [REDACTED] moved out from the family residence.

While counsel, on appeal, claims that the excessive and unpredictable sexual promiscuity of Mr. [REDACTED] has caused the petitioner's mother to fear that the petitioner may be sexually molested if left alone with Mr. [REDACTED], no evidence was furnished to establish that she was in fact left alone with Mr. [REDACTED] and that she was the subject of extreme cruelty. Further, although the director, in his request for additional evidence dated December 12, 1999 and in his notice of intent to deny dated March 29, 2000, listed examples of evidence the petitioner may submit to show that she has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen parent while residing with that parent, no additional evidence has been furnished.

The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(e)(1)(i)(E).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.